

**REMARKS**

Claims 1-45 are pending in the present application. Claims 1, 24, 27, 28, 38, 44 and 45 have been amended. Claims 5, 11-19 have been canceled. Applicants have noted and carefully studied the Examiner's comments and the cited art. Applicants respectfully traverse the rejections and request reconsideration. Applicants believe that the present application is now in condition for allowance, which prompt and favorable action is respectfully requested.

**Amended Claims**

Claims 1, 24, 27, 28, 38, 44 and 45 have been amended to more accurately claim the subject matter that Applicants regard as the invention. Applicants submit that the new language in the amended claims do not include new matter. Applicants submit that such claims are allowable at least because of Applicants' arguments highlighting the explicit and inherent differences between Applicants' claimed subject matter and that disclosed by the cited reference as well as that known to those of ordinary skill in the art, and therefore that the claimed subject matter therein is neither anticipated, nor is it obvious in light of such reference or in light of that known to those of ordinary skill in the art. As such, Applicants also request the removal of the pending rejections and the allowance of the claim.

**Canceled Claims**

Applicants, to accelerate prosecution of this Application, cancel claims 5, 11-19 without prejudice.

**Claims 1-45**

The Office Action has rejected claims 1-45 under 35 U.S.C. 103(a) as being unpatentable over Barrett.

**Barrett**

Applicants submit that Barrett discloses a system and method for displaying file parameters, (title). “The task at hand is to give the user a visual indication of how long it would take to download that hyperlink's Web page,” (col. 5, lns. 36-38). “The downloading delay caused by traffic is measured by simply sending a test message from the local user to the remote server (step 14),” (col. 5, lns. 42-44). “In step 16, the user receives a response from the remote server. The user then evaluates the response (step 18). This can be done by measuring the amount of real time between transmission of the test message and receipt of the response. This time interval is used as an estimate of the download time, (col. 5, lns. 58-63). As such, Applicants submit that Barrett is directed to a system where the client device is the location where the measurement of transmission time is performed, and more specifically, the transmission time that is measured is a time between sending a test message to a server, and the time to receive a response at the user device.

**Independent Claims 1, 20, 24, 27, 28, 38, 44 and 45**

Applicants submit that Barrett, whether considered alone or in combination with that known to one of ordinary skill in the art, does not disclose, teach or suggest Applicants’ claimed subject matter of claims 1, 20, 24, 27, 28, 38, 44 and 45.

**Acknowledgement Of What Barrett Doesn’t Disclose, Teach or Suggest**

First, Applicants acknowledge the Office Actions’ statement that “Barrett does not explicitly state that the user’s device is wireless.”

**Barrett’s Measuring Of Transmission Time At The Client Device Is Not Measuring Transfer Rates At A Server**

Applicants submit that Barrett is wholly absent any discussion of, for example, the performing a measurement of a transfer rate at a location apart from a client device. Instead, Barrett is rather directed to a system “to give the user a visual indication of how long it would take to download that hyperlink's Web page,” (col. 5, lns. 36-38), where a “downloading delay caused by traffic is measured by simply sending a test message from the local user to the remote server (step 14),” (col. 5, lns. 42-44, and where “the user receives a response from the remote server ... [and the] user then evaluates the response ... by measuring the amount of real time between transmission of the test message and receipt of the response. [where such] time interval is used as an estimate of the download time, (col. 5, lns. 58-63). As such, Applicants submit that not only does Barrett not disclose, teach or suggest, whether considered alone or in combination with that known to those of ordinary skill in the art, the measuring of transfer rates at a server, but, Barrett in fact teaches away from such functionality by determining any such delay at the user device where what is examined is the time that expires during the period between the sending of a test message from a user device to the time when a corresponding response is received from a server. Further, Applicants note that as defined in Barrett, such time includes the time for the test message to reach the server, but the time for the server to generate and send the response, and the time required to reach the client device.

#### Dependent Claims 2, 21, 25 and 29

Applicants submit that as dependent claims of parent claims 1, 20, 24 and 28, dependent claims 2, 21, 25 and 29 are allowable for at least the reasons that the corresponding parent claims are allowable. Applicants further submit that such dependent claims are also allowable in light of the presence of novel and non-obvious elements contained in the dependent claims that are not otherwise present in the corresponding parent claims.

Dependent Claims 32, 33, 41 and 42

Applicants submit that as dependent claims of parent claims 28 and 38, dependent claims 32, 33, 41 and 42 are allowable for at least the reasons that the corresponding parent claims are allowable. Applicants further submit that such dependent claims are also allowable in light of the presence of novel and non-obvious elements contained in the dependent claims that are not otherwise present in the corresponding parent claims.

Dependent Claims 6 and 23

Applicants submit that as dependent claims of parent claims 1 and 20, dependent claims 6 and 23 are allowable for at least the reasons that the corresponding parent claims are allowable. Applicants further submit that such dependent claims are also allowable in light of the presence of novel and non-obvious elements contained in the dependent claims that are not otherwise present in the corresponding parent claims.

Dependent Claims 7-10

Applicants submit that as dependent claims of parent claim 1, dependent claims 7-10 are allowable for at least the reasons that the parent claim is allowable. Applicants further submit that such dependent claims are also allowable in light of the presence of novel and non-obvious elements contained in the dependent claims that are not otherwise present in the parent claim.

Dependent Claims 22 and 26

Applicants submit that as dependent claims of parent claims 20 and 24, dependent claims 22 and 26 are allowable for at least the reasons that the corresponding parent claims are allowable. Applicants further submit that such dependent claims are also allowable in light of the presence of novel and non-obvious elements contained in the dependent claims that are not otherwise present in the corresponding parent claims.

Dependent Claim 30

Applicants submit that as a dependent claim of parent claim 28, dependent claim 30 is allowable for at least the reasons that the corresponding parent claim is allowable. Applicants further submit that such dependent claim is also allowable in light of the presence of novel and non-obvious elements contained in the dependent claim that is not otherwise present in the parent claim.

Dependent Claim 31

Applicants submit that as a dependent claim of parent claim 28, dependent claim 31 is allowable for at least the reasons that the corresponding parent claim is allowable. Applicants further submit that such dependent claim is also allowable in light of the presence of novel and non-obvious elements contained in the dependent claim that is not otherwise present in the parent claim.

Dependent Claim 34

Applicants submit that as a dependent claim of parent claim 28, dependent claim 34 is allowable for at least the reasons that the corresponding parent claim is allowable. Applicants further submit that such dependent claim is also allowable in light of the presence of novel and non-obvious elements contained in the dependent claim that is not otherwise present in the parent claim.

Dependent Claim 39

Applicants submit that as a dependent claim of parent claim 38, dependent claim 39 is allowable for at least the reasons that the corresponding parent claim is allowable. Applicants further submit that such dependent claim is also allowable in light of the presence of novel and non-obvious elements contained in the dependent claim that is not otherwise present in the parent claim.

Dependent Claims 42 and 43

Applicants submit that as dependent claims of parent claim 38, dependent claims 42 and 43 are allowable for at least the reasons that the corresponding parent claim is allowable.

Applicants further submit that such dependent claims are also allowable in light of the presence of novel and non-obvious elements contained in the dependent claims that are not otherwise present in the parent claim.

## CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated: November 2, 2004

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